

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN CIVIL LIBERTIES UNION,
CENTER FOR CONSTITUTIONAL RIGHTS,
PHYSICIANS FOR HUMAN RIGHTS,
VETERANS FOR COMMON SENSE AND
VETERANS FOR PEACE,

Plaintiffs,

v.

DEPARTMENT OF DEFENSE, AND ITS
COMPONENTS DEPARTMENT OF ARMY,
DEPARTMENT OF NAVY, DEPARTMENT OF
AIR FORCE, DEFENSE INTELLIGENCE
AGENCY; DEPARTMENT OF HOMELAND
SECURITY; DEPARTMENT OF JUSTICE,
AND ITS COMPONENTS CIVIL RIGHTS
DIVISION, CRIMINAL DIVISION, OFFICE OF
INFORMATION AND PRIVACY, OFFICE OF
INTELLIGENCE POLICY AND REVIEW,
FEDERAL BUREAU OF INVESTIGATION;
DEPARTMENT OF STATE; AND CENTRAL
INTELLIGENCE AGENCY,

Defendants.

WHEREAS, the Central Intelligence Agency (“CIA”) moved on November 10, 2004 for limited relief from the Court’s order of September 15, 2004 with regard to the CIA’s obligations to search and review operational files and CIA Office of Inspector General (“OIG”) investigatory files;

WHEREAS, on February 2, 2005, the Court issued an Opinion and Order denying the CIA’s November 10, 2004 motion;

WHEREAS, the February 2, 2005 Order held, inter alia, that “defendant CIA has failed to satisfy the statutory prerequisites for invoking the operational files exemption, and hence may not

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: <u>4/18/05</u>

avoid the requirements imposed by FOIA, as defined in my Opinion and Order of September 15, 2004;”

WHEREAS, on February 16, 2005, the CIA moved for partial reconsideration of this portion of the Court’s February 2, 2005 Order or, alternatively, for partial relief from the September 15, 2004 Order and presented additional evidence further establishing that the Director of Central Intelligence (“DCI”) has properly designated certain operational files as exempt from the Freedom of Information Act (“FOIA”) under the Central Intelligence Agency Information Act, 50 U.S.C. § 431, and that information responsive to plaintiffs’ FOIA requests likely would be found in those exempt operational files;

WHEREAS, the CIA’s additional evidence consisted of the Second Declaration of Marilyn A. Dorn, dated February 16, 2005, the Third Declaration of Marilyn A. Dorn, dated March 9, 2005, and testimony from Marilyn A. Dorn on April 13, 2005, which was received ex parte and in camera, as contemplated by the Central Intelligence Information Act, see 50 U.S.C. § 431(f)(1);

WHEREAS, during the April 13, 2005 testimony of Ms. Dorn, the Court reviewed an internal CIA memorandum classified at the SECRET level that memorialized the DCI’s 1995 designations of categories of operational files as exempt;

WHEREAS, the internal CIA memorandum reviewed by the Court was in force at the time of plaintiffs’ FOIA requests; and

WHEREAS, the CIA has established that the internal CIA memorandum satisfied the requirements of the Central Intelligence Agency Information Act, 50 U.S.C. § 431(a), for designating operational files as exempt and that information responsive to plaintiffs’ FOIA requests likely would be found in those operational files that were properly exempted;

IT IS HEREBY ORDERED that the CIA has satisfied the procedural requirements of the Central Intelligence Agency Information Act, 50 U.S.C. § 431(a), and has established that information responsive to plaintiffs' FOIA requests likely would be found in those operational files that have been designated as exempt from FOIA; and it is further

ORDERED that, in accordance with the remainder of the Court's February 2, 2005 Opinion and Order, the Central Intelligence Agency's "obligation to search and review [extends], not to operational files, but only to relevant documents that have already been identified and produced to, or otherwise collected by, the CIA's Office of Inspector General. See 50 U.S.C. § 431(c)." Order Denying Motion for Stay, dated February 18, 2005.

SO ORDERED.

Dated: New York, New York
April 18, 2005


ALVIN K. HELLERSTEIN
United States District Judge